
1998 Wis Eth Bd 1
LOCAL CODE

The Ethics Board advises:

that a member of a municipality's governing body who lives in an unsewered subdivision may, consistent with §19.59, *Wisconsin Statutes*, participate in a decision whether to require the extension of water and sewer service to all existing and future development in the municipality.

Facts

¶ 1 This opinion is based upon these understandings:

- a. You are a municipal attorney.
- b. The municipality has several areas within its corporate boundaries that are unsewered and on private water and septic systems.
- c. The unsewered areas encompass several subdivisions, comprising approximately 100 homes. There currently are approximately 1500 homes in the municipality.
- d. The municipality is considering creating a plan, by ordinance amendment, to require all future subdivisions in the municipality to be on sewer lines and to extend sewer and water services to the existing unsewered subdivisions.
- e. The Wisconsin Department of Natural Resources, through written communications and at meetings of the municipality's governing body, is urging the municipality to adopt such a plan.
- f. Under the plan, each house to which sewer and water service is extended will be assessed according to procedures established by §66.60, *Wisconsin Statutes*. The assessment is likely to average approximately \$10,000. However, part of the cost of curb and gutter replacement necessitated by water and sewer extension will be paid by the municipality through general taxes.

- g. It is your understanding that connection to public water and sewer will increase the value of those houses.
- h. Three members of the municipality's governing body own houses in the unsewered subdivisions.
- i. There are allegations that the private septic system of one member of the municipality's governing body may be failing.

Question

¶ 2 The Ethics Board understands your question to be:

How, if at all, does §19.59, *Wisconsin Statutes*, affect the ability of the members of the municipality's governing body who own houses in the subdivisions that would be affected by the extension of sewer and water service to participate in decisions on that issue?

Discussion

¶ 3 Three provisions of §19.59, *Wisconsin Statutes*, the Code of Ethics for Local Government Officials, potentially limit the ability of a member of a municipality's governing body to act on the matter you have asked about. They are found at §19.59(1)(a), (1)(c)1., and (1)(c)2.

Section 19.59 (1)(c) 1. and 2.:

Substantial benefit from, or interest in, matter affected by official action

¶ 4 Section 19.59(1)(c)1. and 2., *Wisconsin Statutes*, provides:

No local public official

May take any official action

Substantially affecting a matter

In which the official has a substantial financial interest.¹

and

¹ Section 19.59(1)(c)1., *Wisconsin Statutes*, provides:

19.59(1)(c) Except as otherwise provided in par. (d), no local public official may:

1. Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.

No local public official
May use his or her public office or position
To produce or assist in the production of
A substantial benefit
For the official.²

¶ 5 A member of the governing body of a municipality is a local public official.³ Participating in official debate, discussions, or votes is a use of office and official action.⁴ Extending water and sewer service to one's house certainly appears to have financial consequences that are substantial -- namely, an assessment that is likely to be about \$10,000 as well as the potential for an increase in the value of one's house. Were it not for §19.59(1)(d), *Wisconsin Statutes*, §19.59(1)(c)1., on its face, would prevent an official whose house would be affected by the decision to extend public water and sewer service from participating in that decision in an official capacity.⁵

¶ 6 But §19.59(1)(d), *Wisconsin Statutes*, provides an exception to the restrictions in §19.59(1)(c). Notwithstanding any restraint that §19.59(1)(c) would otherwise impose, §19.59(1)(d) provides that it "does not prohibit a

² Section 19.59(1)(c)2., *Wisconsin Statutes*, provides:

19.59(1)(c) Except as otherwise provided in par. (d), no local public official may:
2. Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

³ Section 19.42(7u), *Wisconsin Statutes*, provides:

19.42(7u) "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of such a political subdivision or special purpose district, a combination or subunit of any of the foregoing or an instrumentality of the state and any of the foregoing.

* * *

Section 19.42(7w)(a), *Wisconsin Statutes*, provides:

19.42(7w) "Local public office" means any of the following offices, except an office specified in sub. (13):
(a) An elective office of a local governmental unit.

⁴ 1997 Wis Eth Bd 1, ¶4; 1995 Wis Eth Bd 6, ¶4; 1995 Wis Eth Bd 3, ¶4.

⁵ It also appears that, depending on an individual's personal situation, either opposing or supporting a water and sewer extension can lead to a substantial private benefit. If an individual has a failing septic system, extension of public sewer service would enable the individual to save the cost of installing a new private system. For some, a benefit may be enhanced home value. For others, the benefit may be avoidance of the assessment that will be levied.

local public official from taking official action with respect to *any* proposal to modify a . . . municipal ordinance.”⁶ (Emphasis added.) Thus, §19.59(1)(c) will not be a bar to the official’s action *to modify a municipal ordinance* to require the extension of water and sewer service to existing and future development.⁷

Section 19.59(1)(a):

Use of position to obtain a private benefit having substantial value

¶ 7 Section 19.59(1)(a), *Wisconsin Statutes*, reduced to its elements, provides:

No local public official
May use his or her public position or office
To obtain financial gain or anything of substantial value
For private benefit.⁸

¶ 8 We have previously established that a member of the governing body of a municipality is a local public official and that participating in official debate, discussions, or votes is a use of office. The question, then, is: By using public office to require the extension of water and sewer service to his or her home, would a member of the governing body of a municipality obtain

⁶ Section 19.59(1)(d), *Wisconsin Statutes*, provides:

19.59(1)(d) Paragraph (c) does not prohibit a local public official from taking any action concerning the lawful payment of salaries or employee benefits or reimbursement of actual and necessary expenses, or prohibit a local public official from taking official action with respect to any proposal to modify a county or municipal ordinance.

⁷ The section may remain an obstacle to a local official’s acting officially on related matters, such as establishment of specific requirements and plans for a sewer and water system and award of contracts.

⁸ Section 19.59(1)(a), *Wisconsin Statutes*, provides:

19.59(1)(a) No local public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. A violation of this paragraph includes the acceptance of free or discounted admissions to a professional baseball game by a member of the district board of a local professional baseball park district created under subch. III of ch. 229. This paragraph does not prohibit a local public official from using the title or prestige of his or her office to obtain campaign contributions that are permitted and reported as required by ch. 11.

something of value? If so, would the value be substantial? And would it properly be said that what was obtained was for private benefit?

¶ 9 Section 19.42(1), *Wisconsin Statutes*, provides that “anything of value” includes any money, property, favor, service, or payment.⁹ “Substantial value” is contrasted with mere token or inconsequential value.¹⁰ Whether a member of the governing body of a municipality’s voting for or against the extension of water and sewer will result in something of substantial value for private benefit for the official is a question of fact. For an individual with a failing septic system, voting for the extension may lead to substantial financial savings and the receipt of a valuable service. For others, voting against the extension may result in the avoidance of a substantial assessment not offset by any savings.

¶ 10 It is not clear that extension of service to the affected area or retention of the status quo will result in a private benefit of substantial value. You have indicated that the municipality is likely to require a substantial payment from the owner of each property to which water and sewer service is extended. On the other hand, these households may avoid the cost of maintaining wells and septic systems. Property values may be affected. The private benefits and costs are several and, in part, offsetting. In contrast, the public benefits from the provision of public water and sewer service may include added groundwater protection and improved public health. If a public official’s participation or action on government policy is neither forbidden nor antagonistic to public policy, then public policy favors a public official’s exercise of his or her official duties.¹¹

⁹ Section 19.42(1), *Wisconsin Statutes*, provides:

19.42 Definitions. In this subchapter:

(1) “Anything of value” means any money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment, but does not include compensation and expenses paid by the state, fees and expenses which are permitted and reported under s. 19.56, political contributions which are reported under ch. 11, or hospitality extended for a purpose unrelated to state business by a person other than an organization.

¹⁰ 1997 Wis Eth Bd 2, ¶4; 1995 Wis Eth Bd 5, ¶6; 1993 Wis Eth Bd 8, ¶6; 7 Op. Eth. Bd. 1 (1983); 5 Op. Eth. Bd. 97 (1982).

¹¹ See, e.g., 1995 Wis Eth Bd 3, ¶12; 8 Op. Eth. Bd. 33 (1985). We also note the expression of the legislature’s intent set out in §19.45(1), *Wisconsin Statutes*. Although that portion of the Ethics Code is addressed to state officials, we believe it has relevance to local officials as well. In that section, the legislature has stated:

19.45 (1) The legislature hereby reaffirms that a state public official holds his or her position as a public trust, and any effort to realize substantial personal gain through official conduct is a violation of that trust. This subchapter does not prevent any state public official from accepting other employment or fol-

Advice

¶ 11 The Ethics Board advises:

that a member of the governing body of a municipality who lives in an unsewered subdivision may, consistent with §19.59, *Wisconsin Statutes*, participate in a decision whether to require the extension of water and sewer service to all existing and future development in the municipality.

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lowing any pursuit which in no way interferes with the full and faithful discharge of his or her duties to this state. The legislature further recognizes that in a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without all personal and economic interest in the decisions and policies of government; that citizens who serve as state public officials retain their rights as citizens to interests of a personal or economic nature; that standards of ethical conduct for state public officials need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts which are substantial and material; and that state public officials may need to engage in employment, professional or business activities, other than official duties, in order to support themselves or their families and to maintain a continuity of professional or business activity, or may need to maintain investments, which activities or investments do not conflict with the specific provisions of this subchapter.

Section 19.45(1), *Wisconsin Statutes*.